IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8601 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAVIKUMAR GUPTA

Versus

THE HEAD OF TECHNIACAL BUSINESS GROUP(TBG),AHMEDABAD PROJECT

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Appearance:

1. Special Civil Application No. 8601 of 1994

MR M N DEVNANI FOR YOGESH S LAKHANI for Petitioner No. 1

MR AJAY R MEHTA for Respondent No. 1

RULE SERVED for Respondent No. 2-3

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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 06/07/2004

ORAL JUDGEMENT

1.1 The petitioner, an ex-employee of the respondent

- Oil and Natural Gas Commission (for short, "the Commission"), has challenged the termination order dated 09/10/92, whereby, the respondent - Commission considered the petitioner to have resigned from services with effect from 19/05/91, in view of Regulation 14(5) of the O.N.G.C. Leave Regulations, 1968.

2.1 The brief facts of the case are that the petitioner joined the respondent Commission as a Fitter and was promoted stage-wise to the post of Assistant Executive Engineer. On 09/10/92, the respondent Commission passed office order, intimating the petitioner that in terms of Regulation 14(5) of the O.N.G.C. Leave Regulations, 1968, the petitioner is deemed to have resigned from the services of the Commission with effect from 19/05/91. Accordingly, the name of the petitioner was struck of from the rolls of the Commission with effect from 19/05/91. It is this termination order that is under challenge before this Court through this petition.

3.1 Mr.M.N.Devnani learned advocate appearing for Mr.Y.S.Lakhani for the petitioner has submitted that the Commission has not given the petitioner any opportunity of being heard, before passing the impugned order of termination. He further submits that Notice dated 10/12/91 placed at Annexure 'D' to the petition was issued to the petitioner, directing him to show cause as to why his services could not be terminated w.e.f 01/07/91. He further submits that the petitioner replied to the said show cause Notice vide reply dated 30/12/91. On 01/01/92 the petitioner submitted an application seeking voluntary retirement, as he was suffering from severe health problems and had to attend to unavoidable family circumstances, but, the same was also turned down by the Commission.

3.2 Mr.Devnani for the petitioner has also argued that the petitioner has not been paid with his retiral benefits by the respondent Commission. He contends that the respondent Commission has no right to withhold this amount, inasmuch as, the Commission has already instituted civil suit for the recovery of dues against the petitioner.

4.1 Mr.Ajay R Mehta learned advocate appearing for the respondent Commission has submitted that in view of the provisions of Regulation 14(5) of the O.N.G.C. Leave Regulations, 1968, the benefits which were permissible under the Rules were applicable to the petitioner. But, as the petitioner had failed to resume his duties, the

Commission had no other option, but, to consider him as deemed to have resigned from the services with effect from 19/05/91.

4.2 Mr.Mehta for the respondent has also submitted that the petitioner has not paid a sum of Rs.3,31,478/- which is outstanding against him, on account of house building advance and car advance availed by him. Therefore, the payment of gratuity does not arise unless the petitioner clears those dues.

5.1 Mr.Devnani for the petitioner has relied upon a decision in the case of O.N.G.C. & Anr. v. D.C.Shukla reported in 2000 (4) GCD 3270 (Guj), wherein, it was observed that the exercise of powers to terminate the services of Regulation 14(5) of the ONGC Leave Regulations were arbitrary, unreasonable and contrary to the principles of natural justice, and therefore, it could not be upheld. Accordingly, the termination order was set aside. In the present case, there is no question of violation of Section 25-F of the Industrial Disputes Act, and therefore, this decision will not apply in the case of the petitioner.

5.2 Mr.Devnani for the petitioner has also relied upon a decision in the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Ors. reported in JT 1990 (3) SC 725, wherein, it has been observed that Regulation 9(b) of the Delhi Road Transport Authority (conditions of Appointment and Services) Regulation, 1952 was illegal and void being arbitrary, discriminatory and without any guidelines for the exercise of power. In the present case, there were guidelines that leave beyond six months should not be granted, but, that has been followed. Therefore, this decision also will not be applicable to the present case.

6.1 I have gone through the averments advanced by the the petitioner in the petition and the reply filed by the Commission. The petitioner was called upon by the respondent Commission to resume duties immediately. Thereafter, he was also served with Notices to that effect. Subsequently, he presented himself before the Medical Board for medical examination. The petitioner submitted his medical certificate claiming that as he was suffering from hyper-tension he was not in a position to resume his duties.

6.2 Moreover, it is clear from the reply filed by the Dy.Director of the Commission that as per the provisions of Regulation 14 of the O.N.G.C. Leave Regulations, the

petitioner was given all the benefits as per the Rules. The petitioner was served with office Memorandums on 19/11/90, 15/12/90 & 13/03/91, telegram dated 20/04/91, letter dated 22/04/91 and Memorandum dated 19/11/91. Ultimately, he was served with a show cause Notice dated 10/12/91. Therefore, ample opportunities were given to the petitioner to resume his duties, but, to the reasons best known to him, he did not resume the duties.

6.3 It is clear that the statutory Rules framed by the Commission are binding on both the employer and the employee. In the present case, when the respondent Commission has followed the Rules, no discretionary relief can be granted in favour of the petitioner, contrary to the Rules. It seems that the respondent Commission has passed the order after a period of almost one year and five months, though it was required to pass the order in May, 1991. But, on humanitarian grounds, it gave ample time to the petitioner to resume his duties. In spite of that, the petitioner has not resumed his duties. Therefore, this Court will not exercises its discretionary power in favour of the petitioner, who being a responsible Officer of the Commission, has neglected his duties.

7.1 Mr.Devnani for the petitioner has submitted that the petitioner was served with a Notice of termination. He contends that before terminating the petitioner's services, the respondent Commission is required to follow the necessary departmental proceedings. It is not much in dispute that in spite of all the opportunities given to the petitioner, the petitioner has not resumed his duties for the reasons best known to him. Therefore, it cannot be said to be a case of termination of the service, but, a deemed acceptance of resignation by the petitioner, as the petitioner had not resumed his duties even after several intimations. In that view of the matter, merely because of the use of the word 'termination' in the Notice issued to the petitioner, it will not support the case of the petitioner.

8.1 The main contention which is required to be considered by this Court is that the petitioner had tendered an application for voluntary retirement on 01/01/92 i.e. before the passing of the impugned order of termination dated 09/10/92, but, after the deemed date of 19/05/91. The respondent gave Notice to show cause on 10/12/91 which ought to have been given by the respondent on the completion of 180 days, as stipulated under the Rules. But the respondents did not follow the Rules as it gave the Notice after the completion of 180 days.

Thus, before passing the impugned order, the application of voluntary retirement ought to have been considered by the respondent.

9.1 Under these circumstances, it is directed that if the petitioner makes a representation before the respondent Commission for the consideration of his voluntary retirement, the same shall be considered sympathetically, without being influenced by any of the observations made by this Court. Further, it is directed that if the respondent Commission has initiated any civil suit against the petitioner, then, it shall withdraw the same immediately, in view of their withholding retirement dues. The petition stands disposed of accordingly. Rule is discharged with no orders as to costs. Interim relief, if any, shall stand vacated.

(K. S. Jhaveri, J.)

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